IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29 .01.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.108 of 2001

The Managing Director,
Metropolitan Transport Corporation
(Chennai Dn.I) Ltd.,
Chennai-2. ... Appellant/Respondent

vs.

S.Ravi ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the award and decree, dated 10.01.2001 made in M.A.C.T.O.P.No.32 of 1998 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Cause), Chennai.

For Appellant : Mr.M.Krishnamoorthy
For Respondent : Mr.M.Swamikkannu

J U D G M E N T

Aggrieved by the award dated 10.01.2001 made in M.A.C.T.O.P.No.32 of 1998 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Cause), Chennai, the appellant-Transport Corporation preferred this appeal.

2. Brief facts leading to the appeal are as follows:

On 03.10.1997 about 7.45 p.m., when the respondent/claimant was boarding the bus, owned by the appellant-Transport Corporation, at Ezilagam Bus stop through front entrance, the conductor without noticing the passenger gave the signal to the driver to start the bus. Due to the sudden movement of the bus, he fell down and the rear wheel of the bus ran over the left leg and he sustained compound and communited fracture in the right thigh bone, multiple fracture in his hip bone and there was extensive damage to the muscles and nerves. Besides, he also sustained multiple injuries all over his body. The respondent/claimant claimed Rs.10 lakhs as compensation.

3. The appellant-Transport Corporation resisted the claim petition and contended that on 03.10.1997, after alighting the passengers at chepauk bus stop, the bus proceeded towards the signal point and at that time, the respondent attempted to board the moving bus. When, the driver applied sudden brake, the respondent/claimant fell down and sustained injuries. A First Information Report was registered against the respondent/claimant. The appellant-Transport Corporation submitted that the accident had occurred only due to the fault of the respondent/claimant and therefore, they are not liable to pay compensation. They further disputed the age, nature of injuries, treatment, avocation and income of the deceased.

4. Before the Tribunal, the respondent/claimant examined himself as P.W.1. PW.2 is the Doctor, who examined the respondent/claimant with reference to the medical records and issued the Disability Certificate. Ex.P1 – Accident Register; Ex.P2 – Receipt of J.K.Nursing Home; Ex.P3 – Prescription bills; Ex.P4 – Medical Bills; Ex.P5 – Discharge summary; Ex.P6 – Salary Certificate; Ex.P7 – Disability Certificate; Ex.P8 – X-Ray; Ex.P9 – Case sheet from Government General Hospital and Ex.P10 – Service Register of the deceased were marked on the side of the respondent/claimant. The driver of the bus was examined as RW.1 and the copy of the F.I.R., was marked as Ex.R1 on behalf of the appellant-Transport Corporation.

5. On evaluation of the pleadings and evidence, the Tribunal found that the driver of the bus was responsible for the accident and awarded Rs.4,05,000/- as compensation with 12% interest.

6. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and M.Swamikkannu, learned counsel for the respondent.

7. Learned counsel for the appellant submitted that the accident did not occur at the bus stop as stated in the claim petition. He submitted that after alighting all the passengers, the driver started the bus and at that time, the respondent attempted to board the moving bus, fell down and sustained injuries. He further submitted that the Tribunal has erred in believing the sole testimony of the claimant and failed to appreciate the evidence of RW.1, duly supported by Ex.P1, First Information Report.

8. The averments made in the counter affidavit are that after alighting the passengers at the bus stop, the bus was proceeding towards the signal point. At that time, the respondent/claimant attempted to board the moving bus, fell down and sustained injuries. Ex.P1, First Information Report was registered by a Grade-I, Head Constable, on receipt of some information from a third person. Neither the informant nor the person who registered the First Information Report has been examined to prove that the accident had occurred as claimed by the appellant. The information received by the Head Constable is hearsay. When the burden is shifted on the appellant-Transport Corporation, they have not let in sufficient evidence to disprove the averments made in the claim petition. It is true that the F.I.R., is the earliest document. But the contents of the document have to be proved, if the facts are disputed.

9. This Court in Venkataswami Motor Service v. C.K.Chinnaswamy [1989 ACJ 371], has held that the fundamental duty of both, the driver as well as the conductor, to verify specifically whether any passenger is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped, irrespective of the fact whether that place of stopping is a bus stop or not.

10. In a decision in N.K.V.Brothers (P) Ltd., v. M.Karumari Ammal [AIR 1980 SC 1354], it was held that Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable.

11. A Division Bench of this court in M. Jaganathan v. Pallavan Transport Corporation Ltd., etc., [1997 (1) LW 226], has held that the crew of the Transport Corporation bus is responsible when the passengers alight from the bus when it halts not at a stopping place. A Duty is cast on the crew is not letting the passengers get hurt even if it is not a bus stop.

12. The view of the Division Bench was affirmed in yet another Division Bench judgment of this Court reported in Metropolitan Transport Corporation (Chennai Div.I) Ltd v. K.Shankar [I (2002)

ACC 488 (DB)], where the Court observed that,

"In this connection we may observe that even assuming that the accident took place in the manner suggested by the driver of the bus, that will not have the effect of exonerating the driver and owner from the liability to pay compensation since it is well settled that a person attempting to alight from a moving bus as also a person trying to board a moving bus will nevertheless be a passenger for the purpose of awarding compensation in a road traffic accident..... It is further observed that the driver of the bus which carries passengers owes a duty for the safety of passengers and that while driving he must avoid acts of commissions which can reasonably be foreseen to injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. The aforesaid decision of this Court in appeal has been confirmed by the Supreme Court in 2001 (1) CTC 49 wherein the Apex Court rejected the contention of the owner of the bus, finding negligence on the part of the driver."

13. In the instant case, excepting the driver of the bus, no independent witness has been examined to disprove the case of the respondent. Following the principles laid down in the above judgment of this Court, I fm of the view that the respondent/claimant has discharged his obligation of proving negligence on the part of the driver and under such circumstances, the finding of the Tribunal cannot be termed as perverse.

14. As regards quantum, learned counsel for the appellant contended that the disability compensation of Rs.1 lakh for 85% disability, is excessive. He further submitted that the award of Rs.1 lakh for pain and suffering; Rs.40,000/- towards medical expenses; Rs.50,000/- for additional transportation charges; Rs.10,000/- as compensation for pain and suffering of the family members and loss of income; Rs.25,000/- for mental agony due to limping and Rs.50,000/- for loss of expectation of marital prospects are all excessive. He further submitted that interest at 12% per annum awarded by the Tribunal is contrary to the decision of the Hon'ble Supreme Court.

15. Learned counsel for the respondent/claimant submitted that the award amount is not adequate and it requires further enhancement.

16. The respondent was working as an Office Assistant in the Office of the Assistant Commissioner (Urban Land Tax) at the time of accident. Immediately, after the accident, he was admitted in the Government General Hospital. Ex.P1, Accident Register reveals that the respondent sustained compound and communited fracture in right thigh bone and right femur, lacerated wound over the right urinal region extending across the right thigh and fracture of both bones in the right leg. He was admitted in J.K.Nursing Home and treated as inpatient between 06.10.1997 and 04.12.1997. Ex.P2 is the certificate issued by the said Nursing Home. Ex.P5, Discharge summary, reveals that he was admitted in Stanley Medical College Hospital on 21.10.1997 and a surgery was performed on 25.03.1998 and plates were fitted. It is also evident from the discharge summary that skin grafting was also done. Due to the injuries, the respondent/claimant was not able to walk, mobilise his knee and hip and advised for review after two weeks.

17. The respondent/claimant has deposed that he resumed duty only after 7 months after the accident. He has further deposed that due to the injury, there is shortening of the right leg, unable to walk even for short distance and he has lost his marital prospects. PW.2, Doctor who has examined the respondent/claimant with reference to the medical records on 18.11.2000, has deposed that wires have been fitted in the left thigh and there is a loss of muscle to the extent of 15 x 10 cm and malunion in Hip bone. Therefore, the respondent/claimant cannot walk continuously. The Doctor assessed the disability at 15%. The Doctor has further deposed that there is reduction of movement of the hip joint by 40 Degrees and therefore, assessed the disability at 45%. Due to the

shrinkage of muscles on the right knee more than 80 Degrees, the respondent/claimant cannot use Indian toilets, for which, he assessed the disability at 15%. There is a reduction of height of right leg by 1 1/2 inches for which, he assessed the disability at 8%. Altogether, PW.2, Doctor assessed the disability caused due to the injuries at 85% and issued Ex.P7, Disability certificate.

18. The Tribunal has awarded Rs.1 lakh as against 85% disability assessed by the Doctor. Applying the decision in M.Bhagavathy v. Thiruvalluvar Transport Corporation Ltd., [2005(5) CTC 745], the respondent/claimant is entitled to only Rs.85,000/- towards disability compensation.

19. Placing reliance on the following decisions:

1. 1988 ACJ 24 [Ramu Tolaram v. Amichand Hansraj Gupta]
2. AIR 1988 Punjab and Haryana 164 [Tejinder Singh v. Inderjit Singh]
3. 2003 ACJ 1444 [New India Assurance Co. Ltd. v. K.Kartheeswaran]

4. Judgement of the Supreme Court in SLA (Civil) No.7723/2002dated 22.11.2002

5. 2003 ACJ 1210 [S.Achuthan v. M.Gopal]

6. 2006 (4) CTC 433 [Cholan Roadways Corporation Ltd. v. Ahmed Thambi]

learned counsel for the respondent/claimant submitted that the award towards pain and suffering and other heads are reasonable.

20. In 1998 ACJ 24 (Supra), the Bombay High Court, considered that the pain and suffering of a rich man is not more acute than the pain and suffering of a poor, "Riff-Raff". There is no quarrel over the principle. The award towards pain and suffering depends upon the nature of injuries, its location, period of hospitalisation or treatment, kind of treatment etc. For example, An injured person undergoing dialysis or a person with a head injury resulting in recurrent epilepsy or a person with broken ribs suffering from breathing problem cannot be equated with a person who has sustained a simple bone fracture on thigh or ulna bone. Each case has to be decided on its own merits. Therefore, what has to be considered is whether there is just and reasonable compensation under the head pain and suffering.

21. In AIR 1988 Punjab and Harayana 164 (supra), the injured claimant was attended by his wife, mother and servant during the period of his hospitalisation and convalescence at home. The High Court awarded compensation to the service rendered by the kith and kin referring to the judgment in Cunningham v. Harrision [1974 Acc CJ 218], wherein, Lord Denning has held that

"if the wife had give up paid work to took after her husband, he would clearly have been entitled to recover of her behalf because the family income would have dropped by so much.....Even though, she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly call for compensation"

22. Learned counsel for the respondent/claimant submitted that adequate compensation should be awarded to the mother of the respondent/claimant who had attended the injured.

23. With due respect, I am not inclined to accept the case decided by the Punjab and Haryana High Court. It is the duty and obligation of a mother or father or any near relative like sister or brother to

take care of the injured person. The love and affection expected from such person towards the injured during the period of hospitalisation, treatment and of convalescence, should not be quantified in terms of money. It is said that "Blood is thicker than water". It is the natural reaction or expectation of a member of the family to render necessary assistance, in whatever means to a person who is hospitalised. If there is sufficient evident let in by the claimant with documentary evidence or otherwise that the near relatives have lost their income for not attending to their work or avocation or employment, then the same can be considered. Mere oral evidence of the injured that the mother has lost her earning during the period of hospitalisation and therefore, she must be compensated is not an acceptable argument.

24. Further, a Division Bench of this Court in United India Insurance Company Ltd., v. Veluchamy [2005 (1) CTC 38], has held that it is the compensation which is awarded to the injured person for what he has lost due to the injury. In other words, just compensation is awarded under pecuniary and non-pecuniary heads, besides conventional damages.

25. `In a decision in R.D.Hattangadi v. Pest Control (India) Pvt. Ltd. [1995 ACJ 366], the Supreme Court has broadly defined the various heads, under which, an injured or the legal representatives of the deceased can claim compensation. In view of the principles laid down by the Supreme Court in the matter of awarding compensation, I am not inclined to accept the contention of the claimant.

26. In 2003 ACJ 1444 (supra), the claimant was a student of Class IX and he had sustained injuries in leg, shoulder and elbow. There was amputation of right leg above knee and no artificial limb could be fixed. There was restriction of movement due to the shoulder injury and due to that, he could not even use crutches. He had undergone a half-a-dozen surgeries and skin grafting. Hospitalised for several months due to head injury, get headache and lost consciousness very often. The Tribunal has awarded Rs.1 lakh for pain and suffering, which was inclusive of award in other heads.

27. In 2003 ACJ 1210 (supra), an Advocate suffered a compound fracture of left tibia and tibula, closed fracture shaft of left femur, fracture of seventh and eighth ribs on his left side, was hospitalised for over six months and treated as out-patient for more than 15 months, had undergone more than 10 surgeries and suffered reneral failure and dialysis on six occasions, awarded compensation under various heads. He was a practising advocate with four years standing and became unfit to continue his profession. Considering the medical expenses incurred and the pain and suffering, the High Court awarded substantial compensation. The said judgment cannot be applied to the facts of the present case for the reason that the nature of injuries, period of treatment and operations undergone are entirely different.

28. In the instant case, the respondent/claimant has sustained compound and communited fracture in right thigh bone, multiple fracture in his hip bone and there was extensive damage to the muscle and nerves. He was admitted in the hospital and underwent surgery and skin grafting. He has resumed to duty after seven months, which itself shows that he can do work on his own, without the assistance of others. However, it can be reasonably presumed that he may not be in a position to effectively use his limbs or joints while discharging his duties. The above referred cases cannot be applied "Mutandis-Mutatis". Considering the nature of injuries, period of treatment and the speedy recovery, which enabled him to rejoin the duty, an award of Rs.50,000/- would be reasonable.

29. As regards, the award of Rs.50,000/- for marriage prospects, PW.2 □ Doctor has deposed that the respondent has sustained fracture on his right thigh bone and plates have been fixed and skin grafting has also been done till the end of thigh bone. In view of the disability found in limbs and

joints, there is every possibility of losing his marriage prospects. Therefore, the award of Rs.50,000/- towards loss of martial prospects remains unaltered.

30. The Tribunal has awarded Rs.5,000/- as transportation expenses. It is evident that initially, the respondent/claimant had undergone treatment in Government Hospital. Thereafter, he was treated in a private hospital, where he had undergone a surgery. The Doctors, who have performed the operation, have advised him for review. Therefore, it can be reasonably presumed that the respondent/claimant would have incurred some amount for transportation. The award of Rs.5,000/- for transportation charges is confirmed.

31. However, there is absolutely no evidence to show that he had engaged a vehicle to attend to his office. The Tribunal has awarded Rs.50,000/- towards future transportation expenses, as claimed. Even the Doctor, who assessed the disability, has not given any evidence that the respondent/claimant has to use crutches or any apparatus to enable the respondent/claimant to walk. The award towards future transportation expenses is on the higher side. However, considering the fracture in the thigh bone and hip, the award is restricted to Rs.10,000/-. The future expenses shall not carry any interest as per the decision in R.D.Hattangadi vs. Pest Control (India) Pvt. Ltd. And others [1995 ACJ 366].

32. Though the respondent/claimant had produced medical bills for Rs.27,071.75, the Tribunal has awarded Rs.45,000/- for medical expenses. The Tribunal has not given any reasons for awarding Rs.45,000/-. But however, looking at the nature of injuries, it could be reasonably presumed that the respondent/claimant would have certainly incurred medical expenses after discharge from the hospital. Therefore, the award of Rs.45,000/- towards medical expenses is confirmed.

33. The Tribunal has awarded Rs.25,000/- for inability to sit crossed leg. The disablement caused due to the injuries at various parts of the body including limb and joints, has been assessed at 85%, for which, compensation has already been awarded. Therefore, a separate compensation of Rs.25,000/- cannot be awarded for his inability to sit crossed leg. Such compensation forms part of overall disability assessed by the Doctor and therefore, the separate award of Rs.25,000/- is liable to be set aside.

34. The award of Rs.20,000/- for extra-nourishment for the period of hospitalisation and for further treatment, cannot be termed as excessive and therefore, it is confirmed. The award of Rs.10,000/- towards pain and suffering and loss of income to the family members is liable to be deducted as there is no evidence to show that they have lost their income by any means.

35. Learned counsel for the respondent, placing reliance on the decision in National Insurance Co. Ltd. v. Swaroopa & Others [AIR 2006 S.C. 2472], submitted that the interest awarded need not be altered. In the said decision, the accident had occurred in the year 1988 and the claim was made in the year 1993. Considering the fact that the accident had occurred 17 years ago, the Apex Court declined to interfere with the rate of interest. In the instant case, the accident had occurred in the year 1997 and the award was passed in 2001. Therefore, the said judgment is not applicable to the facts of this case. Therefore, the interest is reduced to 9% per annum.

36. Learned counsel for the respondent cited certain authorities and sought for enhancement of compensation without filing cross-objection or appeal. These decisions are not applicable, inasmuch as the award itself is found to be excessive. In the result, the respondent/claimant is entitled to the

compensation of Rs.2,65,000/- with interest at the rate of 9% per annum from the date of claim, till the date of realisation, except the compensation awarded towards additional transportation expenses. The apportionment of the award is detailed hereunder.

Transportation charges : Rs. 5,000/-
Extra nourishment : Rs. 20,000/-
Medical expenses : Rs. 45,000/-
Additional Transportation
Charges : Rs. 10,000/-
Marriage Prospects : Rs. 50,000/-
Pain and suffering : Rs. 50,000/-
Disability : Rs. 85,000/-

Rs.2,65,000/-

If the entire award amount with accrued interest is deposited to the credit of M.A.C.T.O.P.No.32 of 1998 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Cause), Chennai, the Tribunal is directed to refund the balance amount to the Transport Corporation with the proportionate accrued interest within two months from the date of receipt of a copy of this order.

37. With the above direction the appeal is partly allowed. No costs.

skm
Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal,
(IV Judge, Court of Small Cause), Chennai.

2. The Record Keeper,
VR Section, High Court, Madras.

+ 1 cc to Mr. M. Swamikkannu, Advocate, SR No.5253

+ 1 cc to Mr. M. Krishnamoorthy, Advocate, SR No.5358

JE(CO)
SR/15.2.2007 Pre-Delivery Judgment in
C.M.A.No.108 of 2001